

REMARKS

Claims 23 through 58, 60 through 80, and 82 through 123 are pending in this Application.

Claims 23 through 58, 60 through 80, and 82 through 123 have been amended. Care has been exercised to avoid the introduction of new matter. Adequate descriptive support for the present Amendment should be apparent throughout the originally filed disclosure as, for example, the Abstract, FIGs. 6, 7, 9, and 11, ¶¶ [0006], [0007], [0067], [0096], [0110], and [0105] through [0113] of the corresponding US Pub. No. 20050209927. Applicants submit that the present Amendment does not generate any new matter issue.

Personal Interview of January 27, 2010.

Applicants express appreciation for the Examiner's courtesy in granting and conducting a personal interview on January 27, 2010. During the interview, the issues generated by the November 12, 2009 Office Action and present claim amendments were discussed. The Examiner and supervisor indicated that the present claim amendments would be considered, but further searching and consideration would be required.

(1) Claims 23, 34, 35, 45, 51, 52, 58, 69, 70, 80, 91, 92, 102, 113, and 114 were rejected under 35 U.S.C. §102(b) as being anticipated by *Airy et al.* (US 20020142780, "Airy").

In stating the rejection, the Examiner asserted that *Airy* discloses all elements of the claimed inventions. Applicants respectfully traverse this rejection.

The factual determination of lack of novelty under 35 U.S.C. §102 requires the identical disclosure in a single reference of each element of a claimed invention, as those elements are set forth in the claims, such that the claimed invention is placed into the recognized possession of

one having ordinary skill in the art. *Praxair, Inc. v. ATM, Inc.*, 543 F.3d 1308, (Fed. Cir. 2008); *Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358 (Fed. Cir. 2003); *Crown Operations International Ltd. v. Solutia Inc.*, 289 F.3d 1367 (Fed. Cir. 2002); *Candi Tech Ltd. v. Resco Metal & Plastics Corp.*, 264 F.3d 1344 (Fed. Cir. 2001). Moreover, when imposing a rejection under 35 U.S.C. §102 for lack of novelty, the Examiner is required to specifically identify where in the applied reference disclosed each and every feature of the claimed invention, particularly when such is not apparent as in the present case. *In re Rijckaert*, 9 F.3d 1531 (Fed. Cir. 1993); *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452 (Fed. Cir. 1984). Indeed, there are fundamental differences between the claimed inventions and *Airy* that scotch the factual determination that *Airy* discloses, or even remotely suggests, the identically claimed inventions.

The inventions defined in independent claims 45, 58, and 80 include an upload data recipient and recite, *inter alia*: “causing, at least in part, reception of an upload descriptor of the content and the content from the sender at the apparatus in accordance with the upload schedule, the upload descriptor including a size of the content; **tracking received data packets and assembling a list of completely uploaded data packets during the upload session at the apparatus**; and after an interruption occurs in the upload session while uploading one of the plurality of data packets, **reestablishing by the apparatus the upload session based upon the upload descriptor and the list of completely uploaded data packets to receive each of the remaining packets that is not completely uploaded.**”

The inventions defined in independent claims 23 and 102 include an upload data sender and recite, *inter alia*: “after an interruption occurs in the upload session while uploading one of the plurality of data packets, causing, at least in part, reception of **an instruction at the**

apparatus to resume the upload session, the instruction including an identifier of the content and a pointer to the one interrupted packet; and reestablishing by the apparatus the upload session to upload to the recipient each of the remaining packets that is not completely uploaded.”

The above-stressed claim features are neither disclosed nor suggested by *Airy*. As acknowledged by the Examiner (p. 13, last paragraph, of the Office Action), *Airy* does not disclose “wherein the content comprises a plurality of data packets, wherein providing for receiving the content comprises providing for sending an upload descriptor and thereafter providing for uploading the content, to thereby enable at least one of the apparatus or the recipient to determine if an interruption occurs in uploading the plurality of data packets such that the recipient receives less than the plurality of data packets of the content, and if an interruption occurs in uploading the plurality of data packets, to thereby enable the recipient to recover the content based upon the upload descriptor such that the recipient receives the plurality of data packets.”

The above-argued fundamental and functionally significant differences between the claimed inventions and *Airy* undermine the factual determination that *Airy* identically discloses the claimed inventions as required under 35 U.S.C. §102(b). *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 976 F.2d 1559 (Fed. Cir. 1992); *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565 (Fed. Cir. 1986). Applicants, therefore, submit that the imposed rejection of claims 23, 34, 35, 45, 51, 52, 58, 69, 70, 80, 91, 92, 102, 113 and 114 under 35 U.S.C. §102(b) for lack of novelty based on *Airy* is not factually viable, and hence, solicit withdrawal thereof.

(2) Claims 24, 29, 30, 46 (presumably intending claim 48), 64, 65, 86, 87, 103, 108, and 109 were rejected as obvious under 35 U.S.C. §103(a) based on *Airy* in view of *Brown et al.* (US 20020194205, “*Brown*”).

(3) Claims 25 through 28, 46, 47, 60 through 63, 82 through 85, and 104 through 108 (presumably intending claim 107) were rejected as obvious under 35 U.S.C. §103(a) based on *Airy* in view of *McDonnell et al.* (US 7,257,386, “*McDonnell*”).

(4) Claims 33, 37 through 42, 50, 53 through 56 (presumably intending claim 57), 68, 72 through 77, 90, 94 through 99, 112, and 116 through 121 were rejected as obvious under 35 U.S.C. §103(a) based on *Airy* in view of *Kohno* (US 20030120802, “*Kohno*”).

(5) Claims 32, 49, 67, 89, and 112 were rejected as obvious under 35 U.S.C. §103(a) based on *Airy* in view of *Squibbs et al.* (US 20040198426, “*Squibbs*”).

(6) Claims 36, 71, 93, and 115 were rejected as obvious under 35 U.S.C. §103(a) based on *Airy* in view of *Kobayashi et al.* (WO 2003/026216, “*Kobayashi*”).

(7) Claims 31, 66, 88, and 110 were rejected as obvious under 35 U.S.C. §103(a) based on *Airy* in view of *Brown* and *Kohno*.

(8) Claims 43, 44, 78, 79, 100, 101, 122, and 123 were rejected as obvious under 35 U.S.C. §103(a) based on *Airy* in view of *Kohno* and *Anderson* (US 2003/0084128, “*Anderson*”).

Each of the above-identified rejections (2) through (8) under 35 U.S.C. §103(a) is respectfully traversed.

Specifically, claims 24 through 33, and 36 through 44 depend from independent claim 23; claims 46 through 50, and 53 through 57 depend from independent claim 45; claims 60 through 68, and 71 through 79 depend from independent claim 58; claims 82 through 90, and 93 through 101 depend from independent claim 80; and claims 103 through 112, and 115 through 123 depend from independent claim 102. Applicants incorporate herein the arguments previously

advanced in traversing the imposed rejection of independent claims 23, 45, 58, 80, and 102 under 35 U.S.C. §103(a) for obviousness predicated upon *Airy*.

None of the additional references to *Brown*, *McDonnell*, *Kohno*, *Squibbs*, *Kobayashi*, and *Anderson* cures the previously argued deficiencies in *Airy*.

Kohno was said to describe a plurality of data packets, and an upload descriptor for determining if an interruption occurs in uploading and to enable the recipient to recover the content based upon the upload descriptor (p. 14, first paragraph of the Office Action). *Kohno*'s interruption is triggered by an error in a received packet or a lost packet (¶ [0074]). *Kohno* detects the error or the lost packet when playing the content in a real-time on-going manner. *Kohno* simply does not “track received data packets and **assemble a list of completely uploaded data packets during the upload session at the recipient**”. After an interruption occurs in the upload session while uploading one of the plurality of data packets, *Kohno* *drops* lost or error packets when the lost/error packets cannot be timely played in a **real-time** sequence (¶ [0074]), in order to receive and play the current/live packets real-time. *Kohno*'s recipient does not take the time to “reestablish the upload session based upon the upload descriptor and the list of completely uploaded data packets to **receive each of the remaining packets that is not completely uploaded**.”

Claim 44, the patentability of which is separately advocated, recites “uploading the remaining packets in accordance with one of a HTTP POST or a HTTP PUT technique, wherein the one of the HTTP POST or HTTP PUT technique includes **uploading the remaining packets including header information comprising a packet range of the remaining packets**.”

Anderson was said to apply the techniques of HTTP HEAD/POST/PUT. However, *Anderson* does not support for the **partial** HTTP POST/PUT that includes **uploading the**

remaining packets including header information comprising a packet range of the remaining packets. *Kohno* was said to provide “header information comprising a bit range of the remaining portion of the content.” However, the Real-Time Transport Protocol (RTP) header in *Kohno* includes only marker bit information to allow video or audio data to be played in real time (¶ [0069]). *Kohno*’s RTP header is not a HTTP POST/PUT header, and *Kohno*’s RTP header does not contain information of a **packet range** of the remaining packets.

Accordingly, even if the applied references were combined as proposed by the Examiner, and again Applicants do not agree that the requisite fact-based motivation has been established, the claimed inventions would not result. *See Uniroyal, Inc. v. Rudkin-Wiley Corp., supra*, Applicants therefore submit that the above-identified rejections (2) through (8) encompassing claims 24 through 33, 36 through 44, 46 through 50, 53 through 57, 60 through 68, 71 through 79, 82 through 90, 93 through 101, 103 through 112, and 115 through 123 under 35 U.S.C. 103(a) are not factually or legally viable and, hence, solicit withdrawal thereof.

Based upon the foregoing, it is apparent that the imposed rejections have been overcome, and that all pending claims are in condition for allowance. Favorable consideration is therefore solicited. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at 703-822-7186 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

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Date

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